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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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10 IN RE: SEIZURE OF VARIOUS
11 BUSINESS AND PERSONAL
12 PROPERTY.
13

NO. MC-07-0003-MWL

ORDER DENYING MOTION FOR
RECONSIDERATION

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15 On April 13, 2007, this Court issued an Order on Innotek
16 Corporation's ("Innotek's"), March 2, 2007 motion for an order
17 directing the Federal Bureau of Investigation ("FBI") to return all
18 seized business and personal property regarding FBI File No. 318E-SE-
19 92451 (Ct. Rec. 1). (Ct. Rec. 4). The Court ordered that because the
20 Federal Rules of Criminal Procedure did not govern the action, and the
21 Court refrained from invoking its "anomalous jurisdiction," the motion
22 was denied and the case was dismissed for lack of jurisdiction. (Ct.
23 Rec. 4).

24 On April 27, 2007, Mr. Finer, attorney for Innotek, filed a
25 motion for reconsideration of the April 13, 2007 order dismissing the
26 case for lack of jurisdiction. (Ct. Rec. 5). Innotek seeks this
27 Court's reconsideration of its order of dismissal.

1 It is a basic principle of federal practice that "courts
2 generally . . . refuse to reopen what has been decided"
3 *Messinger v. Anderson*, 225 U.S. 436, 444 (1912); see,
4 *Magnesystems, Inc. v. Nikken, Inc.*, 933 F.Supp. 944, 948 (C.D. Cal.
5 1996). However, reconsideration is appropriate if the Court: (1) is
6 presented with newly discovered evidence; (2) has committed clear
7 error or the initial decision was manifestly unjust; or (3) is
8 presented with an intervening change in controlling law. *School*
9 *District 1J, Multnomah County v. Acands, Inc.*, 5 F.3d 1255, 1263 (9th
10 Cir. 1993), *cert. denied*, 512 U.S. 1236, 114 S.Ct. 2742 (1994); see,
11 also, *Alliance for Cannabis Therapeutics v. D.E.A.*, 15 F.3d 1131, 1134
12 (D.C. Cir. 1994). There may also be other highly unusual
13 circumstances warranting reconsideration. *School District 1J*, 5 F.3d
14 at 1263.

15 "Motions for reconsideration serve a limited function: to
16 correct manifest errors of law or fact or to present newly discovered
17 evidence." *Publisher's Resource, Inc. v. Walker Davis Publications,*
18 *Inc.*, 762 F.2d 557, 561 (7th Cir. 1985) (quoting *Keene Corp. v.*
19 *International Fidelity Ins. Co.*, 561 F.Supp. 656, 665-666 (N.D. Ill.
20 1982), *aff'd*, 736 F.2d 388 (7th Cir. 1984)); see *Novato Fire*
21 *Protection Dist. v. United States*, 181 F.3d 1135, 1142, n. 6 (9th Cir.
22 1999), *cert. denied*, 529 U.S. 1129, 120 S.Ct. 2005 (2000).
23 Reconsideration should not be used "to argue new facts or issues that
24 inexcusably were not presented to the court in the matter previously
25 decided." See *Brambles USA, Inc. v. Blocker*, 735 F.Supp. 1239, 1240
26 (D. Del. 1990). Accordingly, a party seeking reconsideration must
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1 demonstrate what new or different facts or circumstances are claimed
2 to exist which did not exist or were not shown upon such prior motion,
3 or what other grounds exist for the motion.

4 Innotek has demonstrated no different facts or circumstances,
5 newly discovered evidence, clear error or change in controlling law to
6 warrant reconsideration. Innotek simply provides new argument and
7 asks this Court to change its mind.

8 The Court has reviewed Innotek's argument and supporting papers
9 in its motion for reconsideration. As previously indicated by the
10 Court, since there are no criminal proceedings pending against
11 Innotek,¹ the Court may not review Innotek's claim, absent the Court's
12 invocation of its "anomalous jurisdiction." *Ramsden v. United States*,
13 2 F.3d 322, 324 (9th Cir. 1993). The Ninth Circuit has recognized an
14 inherent power of the district court, termed "anomalous jurisdiction"
15 to permit review of a pre-indictment motion to return property seized
16 by the government. *Ramsden*, 2 F.3d at 324. The Court has considered
17 the four *Ramsden* factors² in light of Innotek's new argument and finds
18 no basis to change its mind with respect to its power to determine the
19 merits of the initial motion (Ct. Rec. 1) under its "anomalous
20 jurisdiction."
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22 ¹The Federal Rules of Criminal Procedure do not apply when there are no
23 pending criminal proceedings. The United States is currently conducting an ongoing
24 investigation of Innotek, but apparently no criminal proceedings have been initiated
at this time by the United States against or involving Innotek.

25 ²The Court has considered the following four factors provided in *Ramsden*:
26 1) whether the government displayed a callous disregard for the constitutional
27 rights of Innotek; 2) whether Innotek has an individual interest in and need for the
property it wants returned; 3) whether Innotek would be irreparably injured by
denying the return of the property; and 4) whether Innotek has an adequate remedy at
law for the redress of its grievance. *Ramsden*, 2 F.3d at 324-325.

1 The government appropriately sought and obtained a warrant(s)
2 from Magistrate Judge Imbrogno prior to seizing the evidence at issue.
3 This Court has reviewed the sealed affidavit(s) and warrant(s) at
4 issue in this case, and, from this Court's review, there appears to be
5 sufficient evidence to establish probable cause to issue the search
6 and seizure warrant(s). There has been no showing by Innotek that the
7 seizure at issue was unlawful or that the government violated
8 Innotek's Fourth Amendment rights (Ct. Rec. 7, pp. 2-4), and no
9 evidence has been presented that shows that the government displayed a
10 callous disregard for Innotek's constitutional rights.

11 Although it appears that Innotek may have a valid interest in a
12 return of its property, Innotek has not established that it will
13 suffer "irreparable" injury if the seized property is not returned.
14 Innotek alleges that its competitive position in the market may be
15 eroded by the delay of the return of its property (Ct. Rec. 7, pp. 4-
16 5); however, there has been no showing that this alleged harm is
17 irreparable.

18 Finally, Innotek fails to show that it will not have the
19 opportunity to challenge the seizure of the property and/or request
20 its return at a later date. If the government initiates criminal
21 proceedings, Innotek may challenge the seizure of the property and
22 seek redress before the Court at that time. While Innotek complains
23 that it will have "no remedy" for its potential loss if no formal
24 charges are brought by the government (Ct. Rec. 7, p. 5), this Court
25 does not agree. There are other avenues for redress, outside of the
26 criminal arena, should Innotek elect to pursue them.

1 After reconsidering the factors provided in *Ramsden*, in
2 conjunction with Innotek's newly provided argument, the undersigned
3 concludes that no rationale has been provided that results in a change
4 of his mind with respect to the power to determine the merits of
5 Innotek's initial motion (Ct. Rec. 1) under its "anomalous
6 jurisdiction." Accordingly, Innotek's motion for reconsideration (**Ct.**
7 **Rec. 5**) is **DENIED**.

8 **IT IS SO ORDERED.** The District Court Executive is directed to
9 enter this Order, forward a copy to Mr. Finer and Assistant United
10 States Attorney K. Jill Bolton.

11 **DATED** this 29th day of May, 2007.

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13 S/Michael W. Leavitt
14 MICHAEL W. LEAVITT
15 UNITED STATES MAGISTRATE JUDGE
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